

## Message Text

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ACTION DLOS-09

INFO OCT-01 NEA-11 IO-13 ISO-00 ACDA-12 AGRE-00 AID-05

CEA-01 CEQ-01 CG-00 CIAE-00 COME-00 DODE-00

DOTE-00 EB-08 EPA-01 SOE-02 DOE-15 FMC-01 TRSE-00

H-01 INR-10 INT-05 JUSE-00 L-03 NSAE-00 NSC-05

NSF-01 OES-07 OMB-01 PA-01 PM-05 SP-02 SS-15

ICA-11 AF-10 ARA-10 EA-10 EUR-12 /189 W

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TO SECSTATE WASHDC PRIORITY 9281

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AMEMBASSY KATHMANDU

AMEMBASSY SUVA

C O N F I D E N T I A L SECTION 01 OF 03 GENEVA 06882

E.O. 11652: GDS

TAGS: PLOS

SUBJECT: LOS CONFERENCE - WEEKLY SUMMARY, APRIL 24-28

BEGIN SUMMARY: COMMITTEE I NEGOTIATION GROUPS CONTINUED DISCUSSIONS OF ARTICLE 153, FINANCING OF THE AUTHORITY, FINANCIAL ARRANGEMENTS BETWEEN CONTRACTORS, ORGANS OF THE AUTHORITY AND VOTING PROCEDURES. THE "HARD CORE" ISSUES, CONTINENTAL SHELF AND REVENUE SHARING MAY BE NEARER TO RESOLUTION IN COMMITTEE II. CHANGES FOR IMPROVEMENTS TO THE MARINE SCIENCE TEXT ARE NOT GOOD. NO AGREEMENT WAS REACHED BY THE G-5 ON SUPPORT FOR U.S. POLLUTION AMENDMENTS. CDS NEGOTIATIONS FOCUSED ON SETTLEMENT OF DISPUTES IN THE ECONOMIC ZONE. END SUMMARY.

1. THE NJENGA WORKING GROUP, NG-1, SPENT THE WEEK ON ARTICLE 153, (REVIEW). THE SESSIONS WERE DEVOTED MAINLY TO SPEECHMAKING WITH THE G-77 STATING THAT THE PARALLEL SYSTEM WAS AN ACCEPTABLE COMPROMISE ONLY BECAUSE A FULL-CONFIDENTIAL

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SCALE REVIEW WAS TO OCCUR IN 20 YEARS. THE INDUSTRIALIZED COUNTRIES STATED THAT A REVIEW SHOULD NOT BE PRE-JUDGED AND MUST BE STRUCTURED TO ATTRACT SUFFICIENT INVESTMENT TO MAKE BOTH SIDES OF THE PARALLEL SYSTEM WORKABLE.

2. CONSULTATIONS BETWEEN THE U.S. AND KEY DEVELOPING COUNTRIES CENTERED UPON A POSSIBLE COMPROMISE IN WHICH

CONTRACTS OR PLANS OF WORK AFTER 25 YEARS WOULD STILL BE APPROVED IF A REVIEW CONFERENCE WERE NOT ABLE TO REACH AGREEMENT UNLESS THE ASSEMBLY TOOK ACTION TO PROHIBIT THEM. THE THEORY IS THAT SUCH PRESSURE ON BOTH SIDES OF THE PARALLEL SYSTEM WOULD BE SUFFICIENT TO PRECIPITATE A COMPROMISE. ALTHOUGH PREFERABLE TO ICNT TEXT AND BEST TEXT NOW ATTAINABLE, THIS COMPROMISE IS ONE ABOUT WHICH WE RETAIN SERIOUS RESERVATIONS. ALTHOUGH WE SHALL NOT SAY SO, ITS ULTIMATE ACCEPTABILITY TO U.S. WOULD PROBABLY DEPEND UPON OUR RETAINING A RIGHT TO WITHDRAW FROM THE SEABED MINING REGIME AFTER 25 YEARS.

3. THE KOH WORKING GROUP (NG-2) COMPLETED DISCUSSION BUT DID NOT RESOLVE THE ISSUE OF FINANCING OF THE AUTHORITY AND THE ENTERPRISE. THE DEVELOPED COUNTRIES SUPPORT A SELF-SUSTAINING ORGAN WHILE THE G-77 PROPOSED THAT THE ENTERPRISE RECEIVE FINANCIAL ASSISTANCE FROM THE AUTHORITY.

4. THE NG-2 BEGAN DELIBERATIONS ON FINANCIAL ARRANGEMENTS BETWEEN CONTRACTORS AND THE AUTHORITY. ON THE ISSUE OF APPLICATION FEES, THE INDUSTRIALIZED COUNTRIES (EXCEPT THE U.S., WHICH DID NOT SPEAK) FAVORED A FEE OF \$100,000 AND THE G-77 FAVORED \$500,000. DISCUSSION WAS SUSPENDED UNTIL OTHER ASPECTS OF FINANCIAL ARRANGEMENTS WERE NEGOTIATED.

ON A FIXED ANNUAL FEE TO MINE THE INDUSTRIALIZED  
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COUNTRIES MAINTAIN THAT SUCH A FEE IS NOT NECESSARY BECAUSE THE HUGE INVESTMENTS REQUIRED FOR DEEP SEABED MINING ARE ENOUGH TO ENSURE DILIGENCE. THE G-77 MAINTAINED THAT THE FEE WAS NECESSARY TO PRODUCE REVENUES FOR THE AUTHORITY. THE U.S. STATED THAT SUCH A FEE WAS NOT NECESSARY BUT, IF INSTITUTED, SHOULD AMOUNT TO NO MORE THAN 25 PERCENT OF A NOMINAL ROYALTY FIGURE AFTER 3 YEARS OF PRODUCTION.

5. THE ENGO GROUP (NG-3) FOCUSED ON THE ORGANS OF THE AUTHORITY, THE COMPOSITION OF THE COUNCIL AND ITS VOTING PROCEDURES AND BOTH THE NG-3 AND A SMALL INFORMAL WORKING GROUP FAILED TO RESOLVE THE ISSUES. BOTH FORMAL AND INFORMAL DISCUSSIONS CENTERED ON THE U.S. PROPOSAL (FOR CONCURRENT MAJORITIES IN 3 OF THE FIRST 4 CATEGORIES IN ARTICLE 159, PARA 1), AND ON THE TRINIDAD AND TOBAGO PROPOSAL (FOR 2/3 OVERALL MAJORITY PLUS 2/3 OF SUBPARAS A-D AS ONE GROUP AND 2/3 OF SUBPARA E AS SECOND GROUP). INDICATIONS ARE THAT G-77 ARE NOT YET READY TO SETTLE THIS ISSUE ON ACCEPTABLE BASIS.

6. DISCUSSIONS IN NEGOTIATION GROUP 4 (CONTINENTAL SHELF, REVENUE SHARING) REVEALED A DEFINITE TREND IN FAVOR OF

THE IRISH FORMULA (IF). ALTHOUGH NO BAND-WAGON EFFECT IS YET APPARENT, IMPORTANT "CLOSET-SUPPORTERS" OF THE IF HAVE EMERGED, E.G., ROK AND MALAYSIA. MORE SIGNIFICANTLY, IT APPEARS THAT THE LL/GDS ARE ACQUIESCING IN ACCEPTANCE OF THE IF AS THE MOST POLITICALLY FEASIBLE MEANS OF ACHIEVING THEIR OBJECTIVES. THE SOVIET SUGGESTION (A 100-MILE OUTER LIMIT OF THE SLOPE OR MARGIN WHERE IT EXTENDS BEYOND THE EEZ, I.E., 300 MILES), DESPITE MOST STRENUOUS EFFORTS TO SELL IT, HAS FAILED TO ELICIT SUPPORT OUTSIDE OF THE EASTERN EUROPEAN GROUP AND CUBA. LL/GDS ACCEPTANCE OF THE IF HAS BEEN EXPLICITLY LINKED TO AN EQUITABLE ACCOMMODATION OF LL/GDS ACCESS TO EEZ LIVING RESOURCES. IF THIS QUESTION

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IS SUCCESSFULLY SETTLED, PROGRESS CAN BE MADE ON THE CONTINENTAL SHELF/REVENUE SHARING ISSUE. THUS, IF THE NANDAN COMPROMISE FORMULA IN NG-4 IS FOUND SATISFACTORY TO THE LL/GDS AND COASTAL STATE GROUPS, TWO OF THE "HARD-CORE" ISSUES OF THE CONFERENCE MAY BE ON THEIR WAY TO RESOLUTION. ALTHOUGH THE USSR'S SHELF PROPOSAL HAS ENGENDERED ONLY MARGINAL SUPPORT, THEIR VOCIFEROUS ADVOCACY COULD NONETHELESS PROVE TO BE SUFFICIENT TO BLOCK THE EMERGENCE OF A COMPROMISE RESOLUTION OF THIS ISSUE.

7. COMMITTEE II OPENED ITS DELIBERATIONS ON "OTHER ISSUES" WITH INITIAL DEBATE PROCEEDING ARTICLE-BY-ARTICLE, AND REACHING ONLY ARTICLE 19. NO SUGGESTED AMENDMENT EVOKED

WIDESPREAD AND SUBSTANTIAL SUPPORT. THIS EXERCISE WILL RESULT IN INNOCUOUS CHANGES, IF ANY, TO THE COMMITTEE II TEXT. IN THIS REGARD, IT IS APPARENT TO THE USDEL THAT AGUILAR (VENEZUELA) SUPPORTS THIS PROCESS OF "TALKING THE ISSUES OUT," WITH NO INTENTION OF INTRODUCING SUBSTANTIAL CHANGES TO THE MAJOR PROVISIONS OF THE TEXT.  
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8. SUPRISINGLY, PERU IN NG-5 HAS TAKEN A SOMEWHAT MODERATE STAND ON SETTLEMENT OF DISPUTES IN THE ECONOMIC ZONE. IT WAS ITS INTERVENTION IN NEGOTIATING GROUP 5 WHICH FIRST INTRODUCED THE NOTION THAT ABUSE BY A COASTAL STATE OF ITS RIGHTS MIGHT BE A SUBJECT FOR COMPULSORY SETTLEMENT. MEXICO CLEARLY HAS VERY STRICT INSTRUCTIONS TO TAKE A HARD LINE AGAINST ANY DISPUTE SETTLEMENT IN THE ECONOMIC ZONE. BOTH MEXICO AND CHILE HAVE INTERVENED REPEATEDLY TO COUNTER ARGUMENTS BY THE LL/GDS.

9. A TROUBLESOME COASTAL STATE STRATEGY SEEMED TO BE EMERGING IN THE FORM OF ATTEMPTS TO LINK THE EXEMPTION OF ECONOMIC ZONE RESOURCE DISPUTES WITH EXCEPTIONS SUPPORTED BY THE U.S., IN PARTICULAR THE MILITARY ACTIVITIES EXCEPTION. MEXICAN AND PERUVIAN SUGGESTIONS THAT ABUSES OF RIGHTS BE SUBJECT TO ADJUDICATION INCLUDED THE PROVISIO THAT THIS WOULD BE AN ACROSS-THE-BOARD RULE, LIMITING THE EXERCISE OF NAVIGATIONAL RIGHTS AND MILITARY ACTIVITIES AS WELL AS COASTAL STATE RIGHTS.

10. A PERUVIAN PROPOSAL WOULD EFFECTIVELY SUBJECT DISPUTES CONCERNING MILITARY ACTIVITIES TO THIRD-PARTY SETTLEMENT IN CASES INVOLVING VIOLATION OF ENVIRONMENTAL RULES AND STANDARDS OR OF CERTAIN COASTAL STATE LAWS AND REGULATIONS. PREFERABLE TO THIS WERE SOVIET AND FRG SUGGESTIONS WHICH WOULD INSTEAD REVISE ARTICLE 297(1)(B) TO LIMIT THE COASTAL STATE LAW ENFORCEMENT EXEMPTION IN THE SAME SUBPARAGRAPH. FORTUNATELY, CONCERN FOR ECONOMIC ZONE FISHERIES QUESTIONS OVERTOOK ALL THESE PROPOSALS DURING THE WEEK'S DISCUSSION. HOWEVER, THEY REMAIN ON THE NEGOTIATING GROUP'S AGENDA FOR CONSIDERATION AT A FUTURE MEETING.

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11. DESPITE STRONG U.S. EFFORTS AT VARIOUS G-5 MEETINGS THERE WAS NO AGREEMENT OR COMMITMENT TO U.S. MARINE POLLUTION AMENDMENTS, PARTICULARLY BY THE USSR AND THE UK.

LACK OF AGREEMENT LEAD TO INTRODUCTION OF ALL U.S. AMENDMENTS IN INFORMAL MEETINGS OF COMMITTEE III. THE AMENDMENTS WITH RESPECT TO PROMOTING ROUTING SYSTEMS, THE INCLUSION OF NOTICE WITHIN THE CONCEPT OF GENERALLY ACCEPTED INTERNATIONAL RULES AND STANDARDS AND CLARIFICATION OF COASTAL STATE FREEDOM TO SET DISCHARGE STANDARDS IN THE TERRITORIAL SEA HAVE BEEN GENERALLY ACCEPTED IN INFORMAL NEGOTIATION GROUPS. OF THOSE REMAINING, ONLY THE QUESTION OF PENALTIES IN THE TERRITORIAL SEA HAS BEEN DISCUSSED IN THE INFORMAL MEETINGS AND THERE APPEARS TO BE A GOOD POSSIBILITY THAT IMPRISONMENT FOR SOME FORMS OF POLLUTION VIOLATION MAY EMERGE, PROBABLY FOR WILLFUL AND SERIOUS POLLUTION. ENFORCEMENT IN THE ECONOMIC ZONE AND PREEMPTION HAVE NOT BEEN DISCUSSED. THE PRESENT TIMETABLE, INCLUDING PROBABLE EXTENDED DEBATE ON THE CANADIAN AMENDMENT ON CONSTRUCTION STANDARDS IN THE TERRITORIAL SEA, MAY WELL FORESTALL EFFORTS ON THESE TWO ISSUES. THE UK AND USSR MAY ACCEPT SOME CHANGES IN THE ENFORCEMENT ARTICLE, BUT THEY REMAIN TOTALLY INFLEXIBLE ON PREEMPTION. A RECENT FRENCH PROPOSAL THAT WOULD LIMIT PORT STATE ENFORCEMENT TO VIOLATIONS COMMITTED WITHIN ITS ECONOMIC ZONE IS NOT A HELPFUL ADDITION. THIS PROPOSAL HAS NOT YET BEEN DISCUSSED.

12. PROSPECTS FOR IMPROVEMENTS IN THE MARINE SCIENCE TEXT REMAIN DIM. THE SOVIETS, DESPITE HEAVY LOBBYING BY THE U.S. ON THE IMPLICATIONS FOR BILATERAL SCIENCE COOPERATION OF THEIR NEGATIVE POSITION ON MARINE RESEARCH, HAVE GIVEN NO INDICATION OF MOVEMENT BUT ALSO HAVE NOT CLOSED THE DOOR. THE PREVIOUS STRONG SUPPORT FROM THE WESTERN EUROPEANS HAS DIMINISHED SIGNIFICANTLY WITH EEC MEMBER STATES NOW SEEKING MERELY REMOVAL OF THE PHRASE "OF A RIGHT" FROM THE DISPUTE SETTLEMENT ARTICLE. EXERCISE OF DISCRETION WOULD NOT BE

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SUBJECT TO DISPUTE SETTLEMENT UNDER THIS FORMULA, BUT  
EXERCISE OF A RIGHT

WOULD BE. BASED ON THIS TACTICAL SITUATION, INCLUDING  
STRONG LDC OPPOSITION TO "RE-OPENING" THE TEXT, THE U.S.  
HAS CONFINED ITSELF TO SEEKING A RETURN TO THE CASTANEDA  
FORMULA (WHICH WAS NEGOTIATED AT THE SIXTH SESSION BUT  
SKEWED BY CHAIRMAN YANKOV IN THE ICNT). SUCCESS OF EVEN  
THIS MODEST GOAL REMAINS VERY MUCH IN DOUBT AT THIS POINT.  
RICHARDSON

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## Message Attributes

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